

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA,	:	
Plaintiff	:	
	:	
vs.	:	CRIMINAL NO. 1:CR-00-247
	:	
GERALD JIVENS,	:	
Defendant	:	

O R D E R

THE BACKGROUND OF THIS ORDER IS AS FOLLOWS:

On February 25, 2008, Defendant filed a motion under 18 U.S.C. § 3582(c) for a reduction in his sentence under Amendment 706 to the sentencing guidelines. On March 5, 2008, the government filed a response, objecting to the reduction on the basis of a charge-bargain Defendant had received. The government otherwise argues that Defendant may be entitled to some relief, subject to consideration of public safety factors and Defendant's institutional history. On March 5, 2008, the probation office submitted an addendum to the original pre-sentence report which concludes that the Amendment applies to Defendant and addresses the government's concerns. The recalculated guideline range is 100 to 120 months, which would indicate a sentence of 95 months

would be proper after recognition of a reduction corresponding to a reduction in the original sentence.

Pursuant to 18 U.S.C. § 3582(c) and U.S.S.G. § 1B1.10, the court has also considered the nature and seriousness of the danger to any person or the community that may be posed by a reduction in Defendant's term of imprisonment, Defendant's postconviction conduct, and the factors set forth in 18 U.S.C. § 3553(a). Based on the same, the court adopts the pre-sentence report addendum and finds that a reduction in Defendant's term of imprisonment is supported by these considerations. We therefore conclude that Defendant is entitled to a time-served sentence to expire on March 17, 2008, to recognize the time requested by the Bureau of Prisons to process Defendant for release. We also note that Defendant has waived any right to appear in court for resentencing.

Accordingly, this 6th day of March, 2008, it is ORDERED that:

1. Defendant's motion (doc. 87) under 18 U.S.C. § 3582(c)(2) is granted as follows.

2. Pursuant to 18 U.S.C. § 3582(c)(2), Defendant's previously imposed sentence of 120 months (imposed on June 5, 2001), as reduced to 114 months by order of June 12, 2002, is reduced to a sentence of time served as of March 17, 2008.

3. The Bureau of Prisons shall release Defendant from custody on March 17, 2008.

4. Except as provided herein, all provisions of the original judgment of June 5, 2001, shall remain in effect.

/s/William W. Caldwell
William W. Caldwell
United States District Judge